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KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER
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MUKHOPADHYAY, BHASKAR

ART UNIT	PAPER NUMBER
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1787

NOTIFICATION DATE	DELIVERY MODE
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05/27/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/589,154	<b>Applicant(s)</b> CHEVALIER ET AL.	
	<b>Examiner</b> BHASKAR MUKHOPADHYAY	<b>Art Unit</b> 1787	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 2/25/2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-15, 18-22, 25-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15, 18-22, 25-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicants' amendment filed dated 2/25/2010 have been fully considered but are not persuasive. Therefore, the following action is **final**.

2. In light of applicants amendments , the 35 USC112 2<sup>nd</sup> paragraph rejections of record and the objection to the abstract are overcome.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-4, 7-15, 18-22, 25- 27, 28, 31 - 36 are rejected under 35 U.S.C. 103 (a) as being unpatentable over NPL “ Apricot Glaze” in view of Wiggett et al.( GB 2078082) and Smadar (USPN 3650766).

6. Regarding claims 1-4, 7-9, 11-14, 18-22, 25, 27, 31, 33, 34-36, “Apricot Glaze” teaches about apricot glaze as a thin liquid ( line 1, e.g. ‘Liquid’) pastry glaze ( e.g. in line 6, “ To prevent soggy pastry crust” and line 9, “ glaze for fruit tarts”) brushed on food products ( Line 2, e.g. ‘brushed’) like pastry and fruit tarts ( line 6, “pastry” and line 9, ‘fruit tart’).

“Apricot Glaze” does not teach about glaze composition obtained by solubilizing calcium (II), reactive low methoxylated –amidated pectin.

Wiggett et al. teach about a fruit composition comprising 10-50% fruit (abstract), soluble calcium chloride to promote gelation (p2, lines 56-60), and gelling agent that is low methoxy-amidated pectin with degree of esterification of 25-40% and degree of amidation of 15-30% (claim 11).

Wiggett et al. also teach about the glaze composition further comprising another gelling agent from the group locust bean, xanthan, or guar gum ( p2, lines 45-48, e.g. ‘ xanthan gum’, ‘guar gum’). Wiggett et al. also teach about the pH of the composition is between 3.0 to 4.2 (p1, line 64, e.g. ‘pH 3.0 to 4.2).

Wiggett et al. also teach about the available calcium ion will be added in the spreadable food composition which is determined on a trial and experiment basis

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because of the many factors like hardness of water, type of fruit ( p1, under specification, lines 66-90, in line 72, e.g. 'determined on a trial and experiment basis').

Regarding claims 1 and 32, Wiggett et al. teach about soluble calcium chloride ( p2, lines 56-60, e.g. "calcium chloride) between 20-50 mg of Ca / gm pectin ( p1, line 49, 0.5 to 1.0 % pectin and p3 line 14, , e.g. ' .8% low methoxyl pectin and p3, line 11, 20-50 mg Ca/g pectin). It is obvious that it meets the claimed ranges of up to about 50 ppm and about 15 ppm to promote gelation

Regarding claim 10, Wiggett et al. disclose the use of 15 % amidated pectin, while the present claim 10 requires about 14% pectin.

It is apparent, however, that the instantly claimed amount of about 14% and that taught by Wiggett are so close to each other that the fact pattern is similar to the one in In re Woodruff , 919 F.2d 1575, USPQ2d 1934 (Fed. Cir. 1990) or Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed.Cir. 1985) where despite a "slight" difference in the ranges the court held that such a difference did not "render the claims patentable" or, alternatively, that "a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough so that one skilled in the art would have expected them to have the same properties".

In light of the case law cited above and given that there is only a "slight" difference between the amount of 15% disclosed by Wiggett and the amount disclosed in the present claims, it therefore would have been obvious to one of ordinary skill in the art that the amount of about 14% disclosed in the present claim 10 is but an obvious

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variant of the amounts disclosed in Wiggett, and thereby one of ordinary skill in the art would have arrived at the claimed invention.

Regarding claims 15, 26, 28, "Apricot Glaze" teaches about a protective coating which "Glaze" (line 5). It is obvious that the brushing the glaze makes a protective coating due to formation of gel.

"Apricot Glaze" does not teach about the formation of gel.

Wiggett et al. teach about the spreadable fruit composition and gum as the thickener (p2, lines 45-62, e.g. in line 43, 'gelling agent" and in line 59, e.g. "spreadable fruit composition'). Wiggett et al. also teach about soluble solids content of 40-50% (claim 4) and pH range of the composition is 3.0 to 4.2 (p1, under 'specification', line 64, e.g. pH 3.0-4.2). It is obvious that soluble solids content of 40-50% represents the Brix value in the range of 50 degree -60 degree. It is also obvious that the glaze is easily cut-able due to formation of a thickness due to gelling agent and thus no flowing down problems will arise.

"Apricot Glaze" and Wiggett do not teach about the jellification needs extra amount of calcium ions when applied onto a food product.

Smadar teaches about the use of methoxy pectin and calcium chloride to form a gel like skin coating skin around the extruded product ( col 2, line 73, e.g. ' methoxy pectin, col 3, lines 11-12, e.g. ' the strength of the skin can be controlled by varying the concentration of alkaline earth salts' and line 23, ' alkaline earth metal ions' preferably calcium ions') and possible ways of application onto a food product supplementing extra calcium by using the slurry composition containing the skin forming material and

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contacted with a source of alkaline earth ions which causes an impervious gel skin structure to immediately form on outer surfaces of the shaped foods (col 3, lines 50-55, e.g. ' 'contacted with a source of alkaline earth ions'). Thus it is obvious that the extra calcium source may be considered prior to application and appropriate for jellification after application.

Smadar also teaches about by controlling the ion concentration, and/or exposure time varying skin strength may be achieved (Col3 lines 10-20, e.g. 'The strength of the skin can also be controlled by varying ion concentration, time of exposure etc.'). It is thus obvious that the firmness of the skin in the form of gelling glaze may be achieved by multiplication of factor 2 varying calcium ion concentration, exposure time etc. Therefore, it would have been obvious to one of ordinary skill to choose amounts of calcium ions, including that presently claimed, such that there is no jellification before application to food but the glaze does jellyfy when applied onto food product that provides extra amount of calcium ion.

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Smadar, Wiggett into "Apricot Glaze". One of ordinary skill in the art would have been motivated to use low methoxylated-amidated pectin which has the property of more calcium reactivity to obtain good gel and good resistance to syneresis (p2, lines 103-105, e.g. ' resistance to syneresis') and to use thickener in the composition so that after application of protective coating, the glaze composition will form a gel at ambient temperature so that the coating layer can be attached firmly with the product.

7. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over “ Apricot Glaze” in view of Wiggett et al. and Smadar and further in view of Holscher et al., USPN 4,762,721.

Regarding claim 5, “Apricot Glaze” in view of Wiggett et al. and Smadar does not teach about thixotropic property.

Holscher et al. teach about thixotropic property of a glazing composition with the addition of xanthan gum (col 1, lines 55-67, e.g. ‘thixotropic property’).

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Holscher et al. into Apricot Glaze in view of Wiggett et al. One of ordinary skill in the art would have been motivated to use xanthan gum as gelling agent which will function as thixotropic agent and will prevent the glaze from dripping off when used on curved surface ( Col 1, lines 65-68, e.g. ' thixotropic properties').

8. Claims 1-4, 7-15, 18-22, 25- 27, 28, 31 - 36 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Miller C, USPN 1,761,738 in view of Wiggett et al.( GB 2078082) and Smadar (USPN 3650766).



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9. Regarding claims 1-4, 7-9, 11-14, 18-22, 25, 27, 31, 33, 34-36, Miller. C teaches about Pastry (page1, line1) and Pastry Glaze composition (p1, lines 72-78, e.g. 'in making the glaze I).

Miller, C does not teach about glaze composition obtained by solubilizing calcium (II), reactive low methoxylated –amidated pectin.

Wiggett et al. teach about a fruit composition comprising 10-50% fruit (abstract), soluble calcium chloride to promote gelation (p2, lines 56-60), and gelling agent that is low methoxy-amidated pectin with degree of esterification of 25-40% and degree of amidation of 15-30% (claim 11).

Wiggett et al. also teach about the glaze composition further comprising another gelling agent from the group locust bean, xanthan, or guar gum ( p2, lines 45-48, e.g. ' xanthan gum', 'guar gum'). Wiggett et al. also teach about the pH of the composition is between 3.0 to 4.2 (p1, line 64, e.g. 'pH 3.0 to 4.2).

Wiggett et al. also teach about the available calcium ion will be added in the spreadable food composition which is determined on a trial and experiment basis because of the many factors like hardness of water, type of fruit ( p1, under specification, lines 66-90, in line 72, e.g. 'determined on a trial and experiment basis').

Regarding claims 1 and 32, Wiggett et al. teach about soluble calcium chloride ( p2, lines 56-60, e.g. "calcium chloride) between 20-50 mg of Ca / gm pectin ( p1, line 49, 0.5 to 1.0 % pectin and p3 line 14, , e.g. ' .8% low methoxyl pectin and p3, line 11, 20-50 mg Ca/g pectin). It is obvious that it meets the claimed ranges of up to about 50 ppm and about 15 ppm to promote gelation

Regarding claim 10, Wiggett et al. disclose the use of 15 % amidated pectin, while the present claim 10 requires about 14% pectin.

It is apparent, however, that the instantly claimed amount of about 14% and that taught by Wiggett are so close to each other that the fact pattern is similar to the one in In re Woodruff , 919 F.2d 1575, USPQ2d 1934 (Fed. Cir. 1990) or Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed.Cir. 1985) where despite a “slight” difference in the ranges the court held that such a difference did not “render the claims patentable” or, alternatively, that “a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough so that one skilled in the art would have expected them to have the same properties”.

In light of the case law cited above and given that there is only a “slight” difference between the amount of 15% disclosed by Wiggett and the amount disclosed in the present claims, it therefore would have been obvious to one of ordinary skill in the art that the amount of about 14% disclosed in the present claim 10 is but an obvious variant of the amounts disclosed in Wiggett, and thereby one of ordinary skill in the art would have arrived at the claimed invention.

Regarding claims 15, 26, 28, “Apricot Glaze” teaches about a protective coating which “Glaze” (line 5). It is obvious that the brushing the glaze makes a protective coating due to formation of gel.

“Apricot Glaze” does not teach about the formation of gel.

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Wiggett et al. teach about the spreadable fruit composition and gum as the thickener (p2, lines 45-62, e.g. in line 43, 'gelling agent" and in line 59, e.g. "spreadable fruit composition'). Wiggett et al. also teach about soluble solids content of 40-50% (claim 4) and pH range of the composition is 3.0 to 4.2 (p1, under 'specification', line 64, e.g. pH 3.0-4.2). It is obvious that soluble solids content of 40-50% represents the Brix value in the range of 50 degree -60 degree. It is also obvious that the glaze is easily cut-able due to formation of a thickness due to gelling agent and thus no flowing down problems will arise.

"Apricot Glaze" and Wiggett do not teach about the jellification needs extra amount of calcium ions when applied onto a food product.

Smadar teaches about the use of methoxy pectin and calcium chloride to form a gel like skin coating skin around the extruded product ( col 2, line 73, e.g. ' methoxy pectin, col 3, lines 11-12, e.g. ' the strength of the skin can be controlled by varying the concentration of alkaline earth salts' and line 23, ' alkaline earth metal ions' preferably calcium ions') and possible ways of application onto a food product supplementing extra calcium by using the slurry composition containing the skin forming material and contacted with a source of alkaline earth ions which causes an impervious gel skin structure to immediately form on outer surfaces of the shaped foods (col 3, lines 50-55, e.g. ' 'contacted with a source of alkaline earth ions'). Thus it is obvious that the extra calcium source may be considered prior to application and appropriate for jellification after application.

Smadar also teaches about by controlling the ion concentration, and/or exposure time varying skin strength may be achieved (Col3 lines 10-20, e.g. 'The strength of the skin can also be controlled by varying ion concentration, time of exposure etc.'). It is thus obvious that the firmness of the skin in the form of gelling glaze may be achieved by multiplication of factor 2 varying calcium ion concentration, exposure time etc. Therefore, it would have been obvious to one of ordinary skill to choose amounts of calcium ions, including that presently claimed, such that there is no jellification before application to food but the glaze does jellyfy when applied onto food product that provides extra amount of calcium ion.

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Smadar, Wiggett into Miller, C. One of ordinary skill in the art would have been motivated to use low methoxylated-amidated pectin which has the property of more calcium reactivity to obtain good gel and good resistance to syneresis (p2, lines 103-105, e.g. ' resistance to syneresis') and to use thickener in the composition so that after application of protective coating, the glaze composition will form a gel at ambient temperature so that the coating layer can be attached firmly with the product.

10. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Miller C, USPN 1,761,738 in view of Wiggett et al. and Smadar and further in view of Holscher et al., USPN 4,762,721.

Regarding claim 5, Miller in view of Wiggett et al. and Smadar does not teach about thixotropic property.

Holscher et al. teach about thixotropic property of a glazing composition with the addition of xanthan gum (col 1, lines 55-67, e.g. 'thixotropic property').

It would have been obvious to one of ordinary skill in the art at the time of invention to include the teaching of Holscher et al. into Miller in view of Wiggett et al. and Smadar. One of ordinary skill in the art would have been motivated to use xanthan gum as gelling agent which will function as thixotropic agent and will prevent the glaze from dripping off when used on curved surface ( Col 1, lines 65-68, e.g. ' thixotropic properties').

### **Response to Argument**

11. Applicants argue that "the cited "Apricot Glaze" reference does not teach or suggest formation of a gel, let alone jellification, only when the composition is applied to a food product as recited in the present claims. As noted in MPEP § 2142.01 (VI), a "prior art reference must be considered in its entirety, ii i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed Cir. 1983), cert. denied, 469 U.S. 851 (1984)." Apricot Glaze" teaches that the "glaze" does not look jelly-like (see line 8). Thus, "Apricot Glaze" effectively teaches away from jellification upon application to a food product support, as it requires the "glaze" not to look jelly-like. However, while the

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reference teaches glaze, there is nothing in the reference that teaches away from the "jellification".

However, while the reference teaches applying the glaze lightly so it does not appear "jelly-like" this does not mean that the glaze itself cannot be and/or is not jellified. Rather, this appears to be teaching that since there is jellification, the glaze must be applied lightly so that a glazed appearance rather than a jelled appearance is given. Even if the glaze coating does not appear jelly-like, the jelly-like characteristics is obvious otherwise the "flowing down" property of liquid will prohibit attachment with the surface of the food.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

12. Applicants argue that "Wiggett et al. do not teach formation of a pastry glaze, but instead teaches spreadable fruit compositions (such as marmalade or jam), or pourable fruit compositions (such as coulis or fruit puree) (see examples)". Given that, this is a teaching reference, it is expected that this prior art will not teach all the claimed elements but will meet the claimed elements deficient in the primary prior art.

However, note that while Wiggett et al., do not disclose all the features of the present claimed invention, Wiggett et al. is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely the fruit composition and the ingredient responsible to promote gelation, and in combination with the primary reference, discloses the presently claimed invention.

13. Applicants argue on page 8, paragraph 1, that “ As acknowledged by the Examiner in the Office Action at page 6, last paragraph, neither "Apricot Glaze" nor Wiggett et al. teach that jellification of a glaze composition that provides the recited amount of  $\text{Ca}^{2+}$  and/or other ions needed for jellification, occurs when the glaze is applied to a food product support. Likewise, neither "Apricot Glaze" nor Wiggett et al. teach or suggest a pastry glaze composition wherein the level of free natural  $\text{Ca}^{2+}$  is up to about 50 ppm.”

It is agreed that "Apricot Glaze" does not disclose level of free natural  $\text{Ca}^{2+}$  as presently claimed, which is why it is used in combination with Wiggett et al. which discloses the use of soluble calcium chloride ( p2, lines 56-60, e.g. “calcium chloride) between 20-50 mg of Ca / gm pectin ( p1, line 49, 0.5 to 1.0 % pectin and p3 line 14, , e.g. ‘ .8% low methoxyl pectin and p3, line 11, 20-50 mg Ca/g pectin). It is obvious that

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Wiggett et al. meet the claimed ranges of up to about 50 ppm and about 15 ppm to promote gelation".

14. Applicants also argue on the same page, paragraph 2, that wherein the level of free natural  $\text{Ca}^{2+}$  is up to about 50 ppm Smadar discloses first coating the food product with a solution containing a skin forming material, and then contacting the coated product with a (external) source of alkaline earth ions (see column 3, lines 28-38). In contrast, the present claims recite a level of  $\text{Ca}^{2+}$  ions and/or other ions that is insufficient for jellification of the pastry glaze composition before application to a food product, which provides the extra amount of  $\text{Ca}^{2+}$  ions and/or other ions needed for jellification. Thus, the extra amount of  $\text{Ca}^{2+}$  ions and/or other ions needed for jellification is provided by the food product itself (such as e.g. apricots or other fruit products), and not from an external source as described by Smadar".

However, while Smadar discloses coated food that is contacted with source of alkaline earth ions, i.e. external source, there is nothing in the scope of the present claims that requires that the extra amount of  $\text{Ca}^{2+}$  ions is from the food itself or excludes using an external source of  $\text{Ca}^{2+}$ . The claims only require that food provides the extra source of  $\text{Ca}^{2+}$  which is clearly taught by Smadar that discloses coating layer on food that has extra  $\text{Ca}^{2+}$ .

15. Applicants argue that "Miller discloses a pastry recipe, and a method for making a pastry glaze in which water or milk is added to sugar, mixed until smooth, followed by



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an optional addition of vanilla and cream of tartar. This is the only disclosure of a glaze by Miller does not teach or suggest any of the limitations of claim 1 as noted above”.

It is noted that Miller teaches about pastry ( page 1, line 1) and pastry glaze composition (page 1, lines 72-78) which are claim elements of claim 1. Other elements were disclosed by teaching references Wiggett and Smadar and the claim not rejected by Miller alone.

However, note that while Miller et al., do not disclose all the features of the present claimed invention, Miller C is used in combination with Wiggett et al. and Smadar to reject the claims.

16. Applicants argue that these invention has unexpectedly surprising results (page 9, 3<sup>rd</sup> paragraph), however, given that “Apricot Glaze” in view of Wiggett et al., and Smadar and also Miller C in view of Wiggett et al., and Smadar disclose glaze identical to that presently claimed, it is clear that such combination will also have the same product absence evidence to the contrary.

### **Conclusion**

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this non-final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning the communication or earlier communications from the examiner should be directed to Bhaskar Mukhopadhyay whose telephone number is (571)-270-1139.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)-272- 1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B.M. /  
Patent Examiner, Art Unit 1787

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1787